

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
SUPPLEMENTAL
APPENDIX**

77-2058

UNITED STATES COURT OF APPEALS
FOR THE SOUTHERN CIRCUIT

7/25/77

JAMES HENRY ROLLINS,
APPELLANT,

-v-

UNITED STATES OF AMERICA,
APPELLEE.

DOCKET NUMBER 77-2058

Supplemental APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

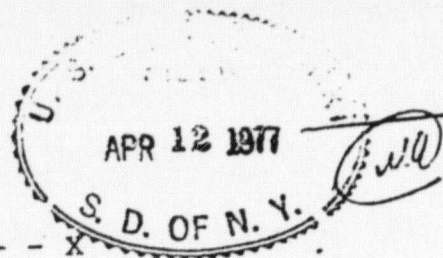
SUBMITTED PRO-SE BY:

JAMES HENRY ROLLINS
BOX 539
JEFFERSON CITY, MO



PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X

JAMES HENRY ROLLINS,	:	MEMORANDUM
	:	<u>DECISION</u>
Petitioner,	:	
-against-	:	76 Civ. 3625
	:	(JMC)
UNITED STATES OF AMERICA,	:	
	:	<u>Pro Se</u>
Respondent.	:	

----- X

CANNELLA, D.J.:

Petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2255, is hereby denied.

Petitioner James Henry Rollins seeks this writ, claiming that his 1974 conviction before this Court was in violation of his constitutional rights in that significant evidence introduced by the Government was the fruit of an improper search, the illegality of which was not discovered by Rollins until sometime after trial. Because the Court fails to find that the absence of the evidence probably would have produced a different verdict, the instant application is denied. See United States v. Slutsky, 514 F.2d 1222, 1225 (2d Cir. 1975).

MICROFILM

APR 12 1977

THE FACTS

After a jury trial, the petitioner was convicted of two counts of mail fraud in violation of 18 U.S.C. § 1341. He was sentenced to concurrent prison terms of 3-1/2 years and fined \$2,000. On Rollins' application for a reduction in sentence, the period of incarceration was amended to run concurrently with a state sentence. Mr. Rollins is presently serving this sentence at Missouri State Prison.

The evidence adduced at trial established that Rollins had participated in a scheme to defraud the Manufacturers Hanover Trust Company of New York ("Manufacturers") of approximately \$650,000 by attempting to cash forged payment orders mailed ^{from} / Kenya to the branch of the Bank at which Rollins had opened an account in the name of "Kodi's Domestic & International Enterprises." Part of the evidence offered by the Government at trial consisted of two passports seized in 1971 from an apartment occupied by Rollins in Oakland, California. One of the passports was issued in the name of James Henry Rollins and had the petitioner's photograph on it; the other was issued in the name of Linwood Joseph Evans and also had petitioner's photograph on it. ^{1/} The Evans passport bore

travel stamps from Kenya dated July and August of 1971. A Government handwriting expert testified that the applications for both passports had been written by the defendant. The introduction of the passports into evidence, therefore, tended to show that Rollins had been to Kenya a number of years prior to the transmission of the payment orders and that he had gone to Kenya under an assumed name.

Prior to trial, Rollins' motion to suppress the passports, based upon lack of probable cause for the issuance of the search warrant, was denied without a hearing. On appeal to the Second Circuit, this Court's denial of Rollins suppression motion was affirmed. United States v. Rollins, 522 F.2d 160 (2d Cir. 1975), cert. denied, 424 U.S. 918 (1976). The petitioner now moves for a new trial pursuant to 28 U.S.C. § 2255, claiming that the affidavit in support of the warrant contained false representations and omissions of material facts sufficient to negate probable cause.^{2/} Rollins alleges that this was neither discovered nor discoverable by him until a subsequent trial was held in California.

Assuming the truth of Rollins' allegations, he does not state grounds for a new trial based upon newly

discovered evidence.^{3/} The Second Circuit has held that,

[t]o succeed on such a motion[,] a defendant must show, inter alia, (1) that the evidence was discovered after trial, (2) that it could not, with the exercise of due diligence, have been discovered sooner, (3) that it is so material that it would probably produce a different verdict.

United States v. Slutsky, 514 F.2d 1222, 1225 (2d Cir. 1975) (emphasis added); accord, United States v. Schwartzbaum, 527 F.2d 249, 255 (2d Cir. 1975), cert. denied, 424 U.S. 942 (1976); United States v. Stofsky, 527 F.2d 237, 243 (2d Cir. 1975). The Court finds that Rollins does not meet the third criterion because the exclusion of the passports at trial probably would not have produced a different verdict.

In addition to the passports there was substantial evidence upon which the jury could have found Rollins^{4/} guilty of the crimes charged. The passports were not the only evidence connecting the defendant to Kenya. Firstly, a personal address book seized from Rollins at the time of his arrest contained a reference to a post office box for a "Mr. Zini," which actually was rented by Walter Donald Obado Ooko, a former employee of the Kenya bank from which the forged payment orders purported to originate. Nor did

Rollins deny his involvement with people in Kenya. When questioned by Manufacturers about the orders, he stated that they concerned the shipment of wheat to Kenya.

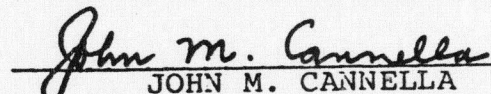
Although the passports, which indicated that Rollins had traveled to Kenya under an assumed name, tended to show that his trip was not for legitimate purposes, there was other evidence to negate Rollins' defense that he was ignorant of the forgeries. The reference to "Mr. Zini" in Rollins' address book was particularly damaging in that the nature of the forgeries was such that the forger or someone participating with him would have had to have had access to certain records at the Kenya bank. Additionally, Rollins' explanation to Manufacturers, that the money was in payment for a shipment of wheat to the Kenyan "Wheat Marketing Board," tended to incriminate him since there was no entity with this title in Kenya at the time in question.

Admittedly, evidence of an assumed name is generally prejudicial to a defendant. Here, however, the passports merely showed that the defendant had not one, but two aliases. In his dealings with the bank in New York the defendant identified himself as Robert Cody, and he continued to do so throughout the trial.

CONCLUSION

The evidence taken as a whole, excluding the passports, was sufficient to establish Rollins' participation in the crimes charged. The Court therefore does not find that the evidence "is so material that [its absence] would probably produce a different verdict." United States v. Slutsky, 514 F.2d 1222, 1225 (2d Cir. 1975). Accordingly, the instant application is denied.

SO ORDERED.



JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
April 11, 1977.

FOOTNOTES

1/ Lee Evans was the name assumed by Rollins during the time he lived in Oakland.

2/ Rollins also alleges that the passports seized were outside the scope of the warrant and that the information relied upon to establish probable cause for the warrant was stale. The claim that the passport seizure exceeded the scope of the warrant was passed on by the Second Circuit and rejected. This matter therefore cannot be relitigated collaterally. E.g., *United States v. Natelli*, No. 76-1494 (2d Cir. March 28, 1977). That the information relied upon to establish probable cause for the issuance of the warrant was stale, is patently frivolous. The crime that formed the basis of the warrant occurred one day before the warrant's issuance.

3/ Although Rollins has made application for a writ of habeas corpus, this part of the relief requested is actually a new trial based upon newly discovered evidence.

4/ Throughout the trial the defendant claimed he was not James Henry Rollins but, instead, Robert Cody. The evidence was overwhelming, however, that he was in fact Rollins. A fingerprint expert testified that the defendant's prints and those on file under the name of James Henry Rollins were taken from the same person. The Chairman of Admissions at the University of Missouri Law School testified that James Henry Rollins attended that school and pointed to the defendant when asked if Rollins was in the courtroom. A photograph of Rollins taken after his enrollment into the law school was shown to the jury. They decided for themselves that James Henry Rollins and the defendant were one and the same.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES HENRY ROLLINS
Petitioner,)

-v-

UNITED STATES OF AMERICA,
Respondent)
-----X

MOTION

76 CIV. 3625

Comes Now The Petitioner, JAMES HENRY ROLLINS, And moves
this court for leave to amend his original petition filed pur-
suant to 28 U.S.C. 2255 as per the following affidavit.

3-2-77

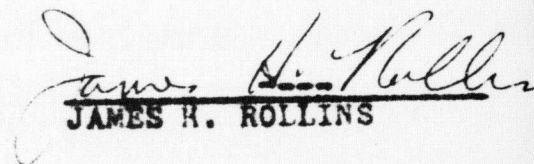
Respectfully submitted
Pro-se

James H. Rollins
JAMES ROLLINS
#29325
Box 900
Jefferson City, Mo.

JAMES H. ROLLINS, being duly sworn deposes and certifies
that he has mailed a copy of this motion and affidavit via
United States Mail postage prepaid from Jefferson City, Mo. to:

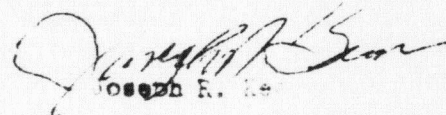
Richard P. Lawler
Assistant U. S. Attorney
S.D.N.Y.
U.S. Court house, Foley Square
New York, New York 10007

STATE OF MISSOURI
COUNTY OF DOLE


JAMES H. ROLLINS

Duly sworn before me this

___-day of March, 1977


Joseph R. Lee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JAMES HENRY ROLLINS,
Petitioner,)

-v-

UNITED STATES OF AMERICA,
Respondent.)
-----X

AFFIDAVIT
76 CIV. 3625 (JMC)

City of Jefferson)
County of Cole : ss.
State of Missouri)

Petitioner, JAMES HENRY ROLLINS, being duly sworn deposes
and says:

1. I am the petitioner in the above entitled cause and I am
familiar with all of the facts involved.

2. I am requesting this court to delete all of paragraph 9
of the original petition and add the following grounds in their
place:

Based upon newly discovered evidence, that was not available
to Petitioner at the time of the trial, the two passports intro-
duced into evidence, upon the trial of his case, were the product

of an unconstitutional search (without probable cause) and in violation of the Fourth Amendment to the United States Constitution, for the reasons, to wit:

1. The affiant, Conrad Blevins, in his affidavit in support of the search warrant, made intentionally false misrepresentations of material facts, which he swore was related to him directly by Agent Ronald Williams.

2. The affiant, Conrad Blevins, in his affidavit in support of the search warrant, made intentional misrepresentations of factst that were material, by omissions(he withheld material facts from the Magistrate)which would have negated; probable cause; credibility of the informant; and the decision of the Magistrate to issue the warrant.

3. The information relied upon to establish probable cause was stale because Blevins had received reliable information that the petitioner was not at the apartment, nor was a 9mm pistol, before he applied for the warrant.

4. The evidence was seized illegally without a search warrant on September 23, 1971 and not pursuant to the search warrant issued September 24, 1971, as claimed.

3. I am further requesting this Court to delete all of paragraph 10 of the original petition and to add the following facts:

On or about October 22, 1974, before the trial commenced a motion was made to suppress two passports that had been seized in a search of Petitioner's apartment in Oakland California on or about September 24, 1971. Petitioner had not been furnished with copies of the search warrant or the supporting affidavit prior to the hearing as was required. Petitioner received the warrant and affidavit in the courts presence on the morning of October 22, 1974. (see trial transcript page 6) The statement of Ronald Williams was not a part of the information that petitioner received, nor was it a part of the 3500 material. Petitioner had no notice of the existence of this statement at all.

The Court was requested to make a ruling on the affidavit as to probable cause from the face of the warrant and the affidavit. The Court ruled that the affidavit sufficiently set forth probable cause and thus denied the motion to suppress. The passports were admitted into evidence at the trial. It was used to show that the Petitioner had used more than one name in the past and that it was highly probable that he was using a fictitious name at present. The passports played an important role in the conviction of Petitioner. Petitioner would like to point out to the Court that one of the counts of the indictment had to do with using a fictitious name in a scheme to defraud.

Petitioner was denied a full and fair hearing on the motion to suppress because the statement of Ronald WILLIAMS was not made available to him or the Court by the Assistant U. S. Attorney. It was not possible to discover this information, testimony and statement prior to trial.

After sentencing, Petitioner, on April 2, 1975, was transferred to Oakland California, under the interstate agreement on detainers, to be tried on the charges pending there. Petitioner filed a motion for discovery in the Circuit Court of Alameda County and it was granted. The District Attorney, under California law, turned over all of the information that he had in his file, reluctantly. Among the material was a statement that Ronald Williams had given to Police Officer B. Flaherty, #6628P on September 23, 1974, at 4:10PM. The statement had not been given to Conrad Blevins as he stated in the affidavit. Petitioner, after reading the statement and comparing it with the affidavit, discovered that there were misrepresentations of material facts in the affidavit by commission and omission, that went to probable cause and to the credibility of the informant.

A comparison of the affidavit of Conrad Blevins and the statement of Ronald Williams, clearly shows, that Conrad Blevins intentionally misrepresented what Williams allegedly told him. As was stated above, it is not clear whether Blevins ever talked to the informant. This is a crucial misrepresentation. Blevins'

affidavit states that Ronald Williams saw Lee J. Evans "run from the office". This was not true. Ronald Williams stated that when he first saw Lee J. Evans, he was in the driveway next to 1263-99th avenue which is approximately a half block away from the office where the shooting took place. Ronald Williams made the same statement at the trial under Oath. Ronald Williams was setting on the perch at 1307-99th Avenue and could not possibly see the office from where he was setting. The office was located behind building 10, which obstructed Williams line of vision. It was ^{able} unreason for Blevins to even believe that Williams could have seen the office building because of this. (See Exhibit C, statement of Ronald Williams and Exhibit A, diagram of area.)

The affiant, Conrad Blevins, had information that he omitted to include in his affidavit. These omissions went to the credibility of the informant and were material. Intentional misrepresentation by omission of material facts are as important as misrepresentations by commission according to the law. Informant

Ronald Williams stated to the police that one of the victims was his brother. (see Exhibits) Russel Richardson, who was the manager of the Garden Manor Square Apartments, also gave a statement to the police accusing Sam Griffen of the killings. It should be pointed out that Conrad Blevins was the sargent in charge of the investigation and had access to all of the information collected.

During the course of the trial, testimony was given that there were rival factions in the Garden Manor Square Apartment and that Lee J. Evans was a rival of Ronald Williams. This information was given to Conrad Blevins. This information shows that the informant was not a disinterested citizen.

Sam Griffen, after being arrested by the police at the scene of the crime with a gun, told Blevins in a taped conversation that some gamblers had a contract out on both of the deceased. Blevins intentionally omitted these material facts from his affidavit because it would have affected the magistrates' determination as to probable cause as it went to the credibility of the informant. Blevins had knowledge of all of these facts and he admitted it in proceedings under Oath.

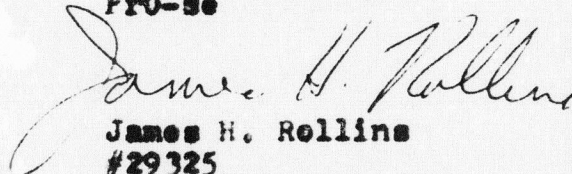
Conrad Blevins testified under Oath, at proceedings in California, on several occasions. It was learned from his testimony that police officers went to the apartment at 9917-99th avenue court looking for Lee J. Evans on September 23, 1971. Richard Graham and Annette Hughes testified that these police officers had broken open the door to the apartment and searched the apartment for Evans and a 9mm pistol. Neither was found in the apartment. It was during this illegal search that the police discovered the passports and seized them.

Blevins was involved in or had knowledge of the illegal search on September 23, 1971. The passports were illegally seized and used as the basis for the description of Lee J. Evans in an APB issued at 8:30 PM, on September 23, 1971. This information does not appear in any of the statements or information given to the police. The September 23 search and seizure of the passports

without a warrant, was clearly illegal.

The Petitioner will call all of the people named in this affidavit to testify at any hearing that is held.

Respectfully submitted
Pro-se



James H. Rollins
#29325
Box 900
Jefferson City, Mo.

James H. Rollins, certifies that he has mailed a copy of this affidavit via United States Mail, postage prepaid to:

Richard F. Lawler
Assistant United States Attorney
S.D.N.Y.
U.S. Courthouse, Foley Square
New York, New York 10007

STATE OF MISSOURI
COUNTY OF COLE

James H. Rollins
JAMES H. ROLLINS

DULY SWORN BEFORE ME THIS

____ DAY OF MARCH, 1977.

MAR

Joseph R. Rollins
JOSEPH R. ROLLINS

My Commission Expires Oct. 10, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES HENRY ROILINS #29325

Full Name & Prison Number

vs.

UNITED STATES OF AMERICA

Case No.

76 CIV 3625

(Clerk to supply)

Motion under 23 U.S.C. § 2255
by Person in Federal Custody
attacking Sentence

*7.1.1
June 11, 1976*

INSTRUCTIONS - READ CAREFULLY

To be considered by the District Court, the motion must be in writing (legibly handwritten or typewritten), signed by the person in custody and verified (notarized & sworn to). Answers to each applicable question must be concise. If the space is too small for the answer to a particular question, finish it on the reverse side of the page or insert one additional blank page, making clear to which question the continued answer refers.

Every motion under 2255 of Title 28, United States Code, must be sworn to under oath. A false statement of a material fact in it may be made the basis of prosecution and conviction for perjury. Take great care to make the answers true and correct.

The Filing Fee is \$15.00

If the motion is made in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information that will establish whether petitioner is unable to pay the fees and costs of the 2255 proceedings.

A copy of the motion, must be served on respondent (WARDEN), and a verified (notarized & sworn to) statement of such service must be attached to the motion.

When the motion is completed, the original and two copies shall be mailed to the Clerk of the District Court for the Southern District of New York.

MISSOURI STATE PRISON.

BOX 900

1. Place of detention-----

-JEFFERSON CITY, MISSOURI 65101

2. Name and location of court which, and name of judge who, imposed sentence

HON. JOHN M. CANNELLA, JUDGE OF THE FEDERAL DISTRICT

COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; U.S. COURTHOUSE, FOLEY SQ

NEW YORK, NEW YORK 10007

3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) **S 74Cr 951**

(b)-----

(c)-----

4. The date upon which sentence was imposed and the terms of the sentence:
DECEMBER 11, 1974 For a term of three and one half years

(a)-----
and a fine of \$1,000 on each of two counts.

(b)-----

(c)-----

5. Check whether a finding of guilty was made

(a) after a plea of guilty -----

(b) after a plea of not guilty -----

XXXXXX

(c) after a plea of nolo contendere -----

6. If you were found guilty after a plea of not guilty, check whether
that finding was made by

(a) a jury -----

XXXXXX

(b) a judge without a jury -----

7. Did you appeal from the judgment of conviction
or the imposition of sentence? **YES** -----

8. If you answered "yes" to (7), list

(a) the name of each court to which you appealed:

1. UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT -----
11. UNITED STATES SUPREME COURT -----
111. -----

(b) the result in each such court to which you appealed:

1. CONVICTION AFFIRMED, SEPTEMBER 15, 1975 -----

11. PETITION FOR A WRIT OF CERTIORARI DENIED FEBRUARY 23, 1976. -----

111. -----

(c) the date of each such result:

1. SEPTEMBER 15, 1975 -----
11. FEBRUARY 23, 1976 -----
111. -----

(d) if known, citations of any written opinions or orders entered pursuant to such results:

I. ----- ~~522 F2d 160~~ -----

II. ----- ~~Unknown~~ -----

III. -----

9. State concisely all the grounds on which you base your allegations that the sentence which was imposed on you is invalid:

(a) Based upon newly discovered evidence, that was not available to me at the time of my trial, the two passports introduced into evidence upon the trial of my case was the product of an unconstitutional search (without probable cause) in violation of the fourth amendment to the United States constitution in that:

(1). The affiant, Conrad Blevins, in his affidavit for the search warrant, made intentionally false misrepresentations of a material fact, allegedly related to him by Ronald Williams the informant

(2) Affiant intentionally withheld material facts from the magistrate which would have negated probable cause and the decision of the magistrate to issue the warrant.

← (3). The evidence seized was outside the scope of the warrant and it was plain error to admit it.

(4). The information relied upon to establish probable cause was stale.

(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) (1). On October 22, 1974, before the trial commenced a motion was made to suppress the evidence seized in the California search (two passports) on the grounds that the warrant was issued without probable cause
- (2). The motion was denied summarily without a hearing and the defendant went to trial and was convicted. The two passports played an important part in the conviction.
- (3). After sentencing, Defendant on April 2, 1975, was transferred to California under the interstate agreement on detainers to be tried on the charges pending there.
- (4). During the course of the proceedings there I discovered from the statements and testimony of Ronald Williams and other witnesses, that there were misrepresentations of material facts in the affidavit; and that there were also omissions of material facts from the affidavit.
- (5). Conrad Blevis stated in the affidavit that Ronald Williams saw Lee J. Evans "run from the office." During the trial and in a statement given on the date of the shooting, Ronald Williams stated that when he first saw Lee J. Evans he was in the driveway next to 1263-99th avenue which is approximately a half block away from the office where the shooting took place. Ronald Williams was sitting on the porch at 1307 99th ave.

and could not possibly see the office from where he was sitting.
(see exhibit c, statement of Ronald Williams and exhibit A
(xx) diagram of area)

(6). The affiant, Conrad Blevins, had knowledge that:
Ronald Williams was the brother of one of the victims;
There were rival factions in the Garden Manor Square Apartment
complex and that Lee J. Evans was a Rival of Ronald Williams;
Citizen witness Russel Richardson accused Sam Griffin of the
killings in a statement given to the police; some gamblers
had a contract out on both deceased; and he omitted it from
the affidavit intentionally because it would have affected
probable cause and the credibility of the informant.

(7). From testimony during the proceedings it was learned from
Conrad Blevins that police officers went to the apartment at
9917 99th Avenue Court looking for Lee J. Evans on September
23, 1971.

(xx)
xx

(8). From the Testimony of Richard Graham and Annette Hughes it
developed that the police broke open the door and searched
the apartment for Lee Evans and a 9mm pistol. Neither was
found in the apartment.

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(9). From the date of birth and other information on the APB, I
believe that affiant was involved in the search of the apart-
ment or had knowledge of it and that the passports and other
evidence was illegally seized and used as the bases for the
description of Lee J. Evans in the APB. This information does
not appear in any of the statements given to the police.

(10). This illegal search and seizure took place on September 23,
1971, the day before the search warrant was issued. The
APB was also issued at 8:30PM on September 23, 1971.

11. Have you previously filed petitions for habeas corpus, motions under
section 2255 of Title 28, United States Code, or any other applica-
tions, petitions or motions with respect to this conviction?

YES

12. If you answered "yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof

1. A 2241 Petition alleging that the law library at the federal House of detention was inadequate and thus denied me access to the Court in violation of the Due Process clause of fifth amendment.

~~Reference to Court for the Southern District of New York~~

11.-----

111.-----

(b) the name and location of the court in which each was filed:
Federal District Court for the Southern District of New York

1.-----

11.-----

111.-----

(b)

(c)

11. Have you previously filed petitions for habeas corpus, motions under section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction?

12. If you answered "yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof

1.-----

11.-----

111.-----

(b) the name and location of the court in which each was filed:

1.-----

11.-----

111.-----

(c) the disposition thereof:

1. Petition dismissed as being moot

11. _____

111. _____

(d) the date of each such disposition:

1. November 14, 1975

11. _____

111. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

1. b None

22.

111.

13. Has any ground set forth in (9) been previously presented to this or any other federal court by way of petition for habeas corpus, motion under section 2255 of Title 28, United States Code, or any other petition, motion or application? **No**

No

14. If you answered "yes" to (13) identify

which grounds have been previously presented:

N.A.

1.

11.

111.

(b) the proceedings in which each ground was raised:

N.A.

1.-----

II.-----

III.-----

15. Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? **YES**-----

(b) your trial, if any?----- **NO**

(c) your sentencing?----- **NO**

(d) your appeal, if any, from the judgment of conviction
or the imposition of sentence?----- **YES**

- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? **NO**

16. If you answered "yes" to one or more parts of (15), list

- (a) the name and address of each attorney who represented you:

1. **LARRY GREENBERG Legal aid society, U.S. Courthouse, Foley Square**
New York, New York 10007

11. **Phyllis Skloot Bamberger, Criminal Appeals Bureau, 509 U.S. Courthouse**
Foley Square, New York, New York 10007

111.-----

- (b) the proceedings at which each such attorney represented you:

1. **Larry Greenburg at arraignment**

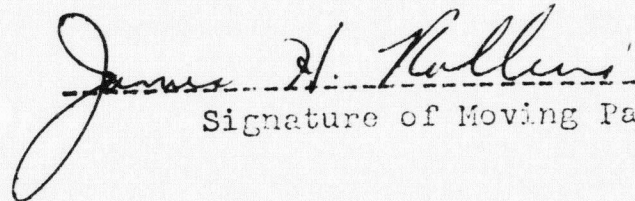
11. **Phyllis S. Bamberger on Appeal**

111.-----

FORMA PAUPERIS AFFIDAVIT
(see instructions, page 1 of this form)

I am a poor person. I have no means of compensation. I cannot because of my poverty pay or give security for cost and still be able to provide myself and my dependents with the necessities of life.

JAMES H. ROLLINS



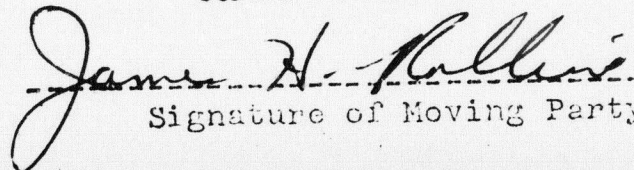
Signature of Moving Party

CITY OF JEFFERSON
COUNTY OF COLE
STATE OF MISSOURI

X
X ss
X

----- JAMES H. ROLLINS -----, being first sworn under oath, presents that he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

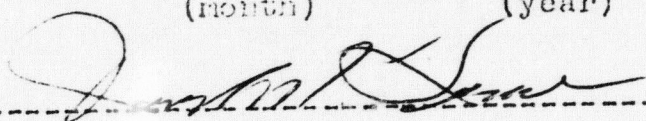
JAMES H. ROLLINS



Signature of Moving Party

SUBSCRIBED and SWORN TO before me this

----- day of -----, ¹⁹⁷¹
(month) (year)



Notary Public

My commission expires

(month) (day) (year)

----- Ca. 10, 1971

AFFIDAVIT OF SERVICE

---JAMES H. ROLLINS-----being duly sworn, states that
he has served a copy of the attached petition upon-----
DONALD WYRICK
---WARDEN, VIA INSTITUTIONAL MAIL-----.

James H. Rollins

Signature and Prison Number
(if any).
JAMES H. ROLLINS 29325

#29325

SUBSCRIBED and SWORN TO before me this

-----day of-----,
(month) (year)

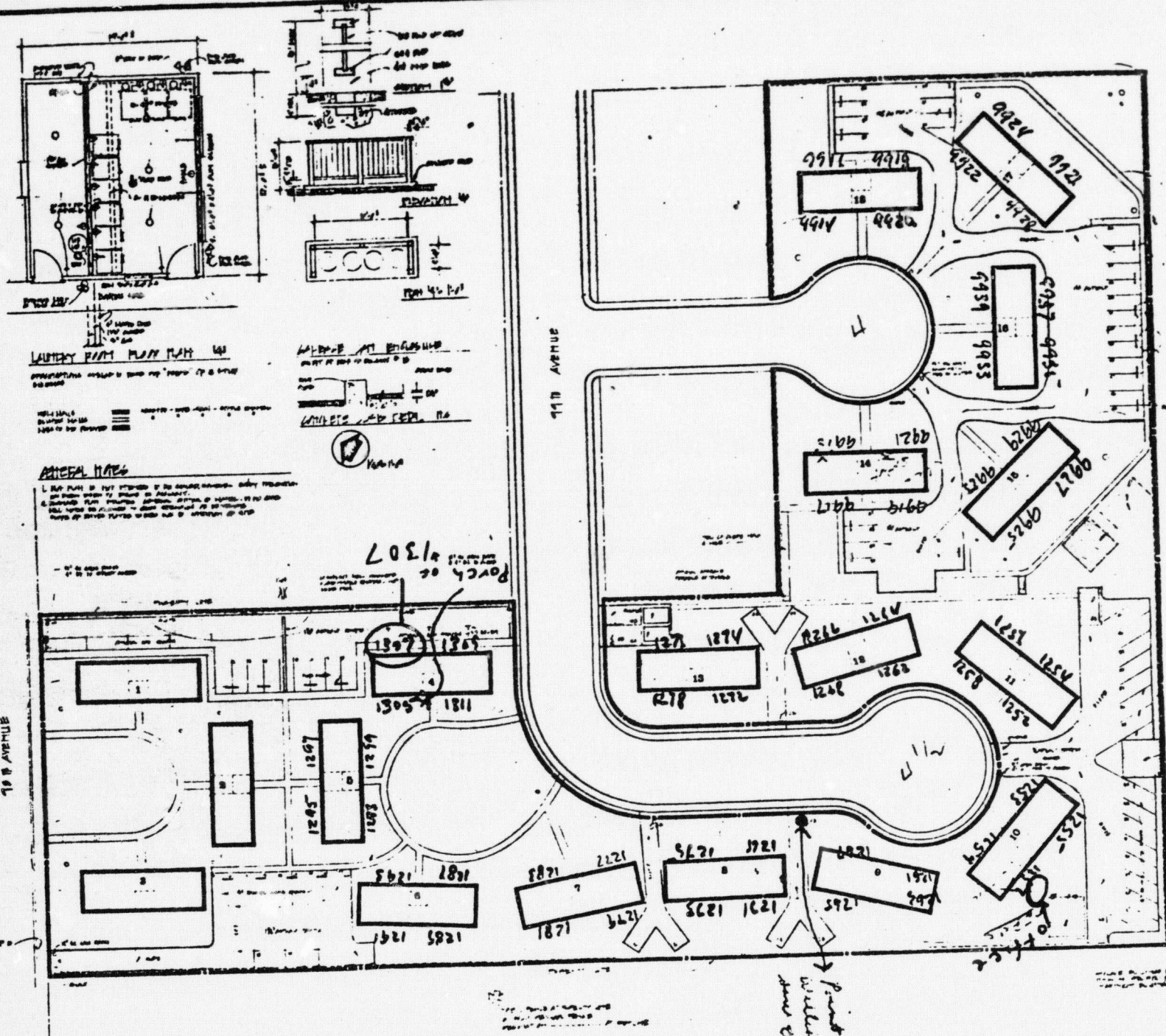
Donald Wyrick

NOTARY PUBLIC

My commission expires

(month) (day) (year)

Exhibit A



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Exhibit B

STATE OF CALIFORNIA) ss.
COUNTY OF ALAMEDA)

AFFIDAVIT FOR SEARCH WARRANT

CONRAD BLEVINS, being first duly sworn,
deposes and says:

That on or about September 23, 1971, in the County of Alameda,
State of California, the crime of felony was committed by Lee J. Evans in the

following manner, to wit: did murder Isaac Lewis and Isaac Gould
with a 9mm. pistol

That affiant has, and there is just, probable and reasonable cause to believe, and he does believe, that there are now in the possession of

Lee J. Evans and Deborah Miles

~~and in and upon the premises~~
and in and upon the premises
and building known and designated as and commonly called 9917 99th Avenue Court
in the City of Oakland in the said County of Alameda,

State of California, including all rooms and buildings used in connection with
said premises and building and adjoining the same and in a receptacle or safe
therein, certain articles, items and property which were the subject matter of
and which were used as a means of committing a felony, and which were and are
intended to be used as a means of committing a public offense, and which articles,
items and property constitute evidence which tends to show a felony has
been committed and that the said Lee J. Evans committed said felony.

That the said articles, items and property are described particularly as
follows, to wit:

9 mm. pistol and ammunition therefore

That the following facts establish the existence of grounds for the issuance of a Search Warrant and further establish probable cause for believing that said grounds exist:

Affiant is a Sergeant of Police attached to the Homicide Section of the Criminal Investigation Division of the Oakland Police Department and is engaged in the apprehension of persons responsible for homicides.

On the afternoon of September 23, 1971, Affiant was advised of a double shooting at 1255 99th Avenue in the office of the Garden Manor Square Apartments and that Isaac Lewis and Isaac Green were the victims.

Affiant thereupon went to said address and personally observed the two mentioned victims lying on the floor of the office in a pool of blood and observed eight 9mm. semi automatic pistols littering the floor of the office. A 9mm. pistol was not found at the scene. (SEE OVER)

WHEREFORE, affiant prays that a Search Warrant issue demanding that an immediate search be made of the person(s) of the said Isaac Lewis

~~and the premises and buildings described herein for the~~
articles, items and property above described and that the same be brought before a magistrate and disposed of according to law.

Affiant

Subscribed and sworn to before me on
September 24, 1971.

Judge of the Court, County of

BEST COPY AVAILABLE

Both victims were dead. In the course of his investigation, Affiant spoke with Ronald Williams of 720 Weld Street in the City of Oakland who stated to Affiant that he had been in the vicinity of the office aforementioned and had heard a series of shots come from the direction of the office and had then observed Lee J. Evans who was personally known to him run from the office carrying a brief case and disappeared from his view in the direction of an apartment which he knows Lee J. Evans to live in located on 99th Avenue Court.

Affiant further was advised by the Pacific Telephone and Telegraph Company that the phone number 569-2219 is leased to a Lee J. Evans at 9917 99th Avenue Court.

On September 24, 1971, Affiant personally spoke with Willie Hale of 9923 99th Avenue Court who told Affiant that he knows that Lee J. Evans lives at 9917 99th Avenue Court in the City of Oakland with a girlfriend by the name of Deborah Miles. Said Willie Hale further told Affiant that he works as a maintenance man at Garden Manor Square Apartments and knows that Deborah Miles rents said apartment at 9917 99th Avenue Court in the City of Oakland.

Affiant is further advised and believes from his experience that 9mm. pistols are easily disposed of and therefore request a nighttime execution of the warrant.

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Exhibit "B"

EX 111 C

1. NAME OF COMPLAINANT OR DEFENDANT

2. REPORT NUMBER

3. NAME OF PERSON GIVING STATEMENT SEX RACE DOB

4. RESIDENCE ADDRESS

5. EMPLOYMENT (NAME ADDRESS PHONE OCCUPATION) OR SUPPLEMENTAL INFORMATION IF UNEMPLOYED OR TRANSIENT

6. STATEMENT TAKEN BY

7. DATE

8. TIME

9. LOCATION

10. PRESENCE OF

11. NAMES AND ADDRESSES

12. PERSONS PRESENT WHEN STATEMENT TAKEN

13. ADMONITION: YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN A COURT OF LAW. YOU HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. IF YOU CANNOT AFFORD A LAWYER ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING, IF YOU WISH ONE.

14. WAIVER:

15. DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?

16. HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

17. STATEMENT:

Oakland Police Department

3. NAME OF PERSON GIVING STATEMENT **WILLIAMS, RONALD M. 10/10/49** SEX **M** RACE **C** DOB **10/10/49**

4. RESIDENCE ADDRESS **7020 66th Ave**

5. EMPLOYMENT (NAME ADDRESS PHONE OCCUPATION) OR SUPPLEMENTAL INFORMATION IF UNEMPLOYED OR TRANSIENT **UNITED COMMUNITY HOUSE**

6. STATEMENT TAKEN BY **B. T. HENRY** name **6638 P** serial no. ON **23** date **10/10** FROM **1010** time started TO **1030** time ended

AT **1200 5th 9th Ave** location where statement taken IN PRESENCE OF **names and addresses** names and addresses of persons present when statement taken

ADMONITION: YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN A COURT OF LAW. YOU HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. IF YOU CANNOT AFFORD A LAWYER ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING, IF YOU WISH ONE.

WAIVER:

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU? **YES**

HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW? **YES**

STATEMENT:

I was sitting on the front porch of 67 9th Ave. I heard 4 or 5 single shots, then what sounded like an automatic. Then I heard about 3 more single shots. It seemed to be coming from the direction of the project at 1st. I looked around to see if anyone else heard them. It was then I saw Mr. Scoggins come out of his apt across the courtyard. He sat down on his porch. I looked back in the direction of the shots.

I saw a man run out the doorway and to 1263 99th. I recognized him as LEE EVANS MAN 33 6'3", 180, Lt Col. SGT SANDY ^{RELY} CURLY HAIR. He lives on 99th and G. He was carrying a little briefcase. ^{little} I'm not sure what he was wearing. Evans ran 1/2 way between the buildings toward the house.

I then jumped up, and went upstairs to ask my sister-in-law where my brother was. She told me that he was in the office. I ran over to the office then and found my brother lying on the floor of the office. I didn't see the other guy but he was behind the desk. I ran back over to my brother's place and had my sister-in-law call for an ambulance. When I returned to the office and reported. This was a true voluntary

TELETYPE		TELEGRAM		DAILY BULLETIN		RADIO	
APB ☐	NORMAL ☐	EMERGENCY ☐	☐ COLLECT	☐ THREE DAYS	☐ ALL POINTS		
	CANCEL ☐	SUPPLEMENT ☐	☐ STRAIGHT MESSAGE	☐ FIVE DAYS	☒ ALL CARS		
AREA (CIRCLE ONE) I II III V VI		☐ NIGHT LETTER		☐ SEVEN DAYS			
MVS ☐ DDL ☐ CII ☐		ATTENTION		MESSAGE NUMBER	CALL LETTERS		
TO POLICE DEPARTMENT, CITY OF		ATTENTION		DATE	TIME		
TO SHERIFF'S DEPARTMENT, COUNTY OF				23 Sep 71	2030		

WANTED FOR 187 PC - 2 COUNTS:

EVANS, Lee; MN 7 Mar 44. 6/0-6/1. 170 lbs. has brown hair in short natural, hazel eyes, light comp. Last seen wearing brownish orange suit. May be driving a 61-62 Ford Sedan, light blue in color. Suspect wanted for two 187s which occurred at 1535 hrs. at 1255-99th Ave. this date. Arrest on Probable Cause and refer to Sgt. Blevins or Sgt. Farkas, Homicide Detail.

Exhibit D

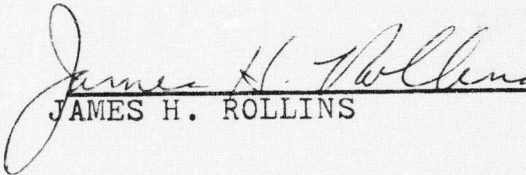
COMMUNICATIONS ORDER
OAKLAND POLICE DEPARTMENT 536-702 (3/70)

REFER: SIGNATURE SERIAL NUMBER ORGANIZATIONAL UNIT
[Signature]
Sgt. C. Blevins 6154-C Homicide

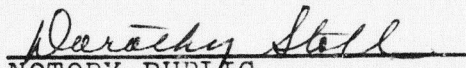
CERTIFICATE OF SERVICE

I JAMES HENRY ROLLINS, being duly sworn deposes and says that
I have mailed a copy of this Appendix to Appellant's Brief via
U.S. Mail postage prepaid addressed as followed:

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
U.S. COURTHOUSE, FOLEY SQUARE
NEW YORK, NEW YORK 10007


JAMES H. ROLLINS

DULY SWORN TO AND SUBSCRIBED
BEFORE ME THIS 25 DAY OF
July 1977.


NOTARY PUBLIC

MY COMMISSION EXPIRES 5/19/1980.